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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.   | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/730,691  | 12/08/2003  | Mark W. Bergman      | B787.12-0008          | 4310             |
| 164   | 7590        | 01/21/2005           | EXAMINER              |                  |
| KINNEY & LANGE, P.A.<br>THE KINNEY & LANGE BUILDING<br>312 SOUTH THIRD STREET<br>MINNEAPOLIS, MN 55415-1002 |             |                      | BAREFORD, KATHERINE A |                  |
|   |             |                      | ART UNIT              | PAPER NUMBER     |
|   |             |                      | 1762                  |                  |

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/730,691

Applicant(s)

BERGMAN ET AL.

Examiner

Katherine A. Bareford

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The amendment of Dec. 8, 2004 has been received and entered.

#### *Specification*

2. The objection to the disclosure because of informalities is withdrawn due to the insertion of the issued patent number at page 1, line 5, of the specification.

#### *Claim Rejections - 35 USC § 102*

3. The rejection of claims 1-3 and 8 under 35 U.S.C. 102(b) as being anticipated by Zebrowski (US 5836469) is withdrawn due to applicant's amendment to the claims as to the elastic strap and container size.

#### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 4927046) in view of Zebrowski (US 5836469).

Claim 1: Armstrong teaches a method for securing a users hand to a container. Figures 1 and 6 and column 2, lines 40-45. The container has an outer surface and an inner surface. Figure 1 (note area 1 and area 7). The inner surface defines a cavity therein. Figure 1. A supportive handle is provided which is an integral part of the container body. Figure 5 and column 4, lines 15-35. To hold the container, the hand of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Figures 1 and 6 and column 3, lines 1-15. A fluid applicator tool is provided. Figure 6. The fluid applicator tool is inserted into the fluid within the container. Figures 1 and 6. The fluid is applied to a surface with the fluid applicator tool. Figure 6.

Claim 20: the fluid can be paint. Column 2, lines 40-45.

Claim 21: the applicator tool can be a brush. Figure 6.

Armstrong teaches all the features of these claims except the use of the strap as claimed and the adjustable features of the strap.

However, Zebrowski teaches a method for securing a user's hand to a container. Column 1, lines 50-55 and column 2, line 55 through column 3, line 20 and figures 7-10. The container

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has an outer surface and an inner surface. Figures 7-10 and column 2, lines 20-35. The inner surface defines a cavity therein. Figures 7-10 and column 2, lines 20-35 (for holding the beverage). One method of securing the user's hand to the container is to provide an integral handle molded in the container. Figures 1-6 and column 2, lines 30-55. To hold the container, the hand of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Column 2, lines 30-55. A second method of securing user's hand to the container is to provide a strap having at least one end secured to the outer surface of the container. Figures 7-10 and column 2, lines 55-65 (strap 40). The strap is mounted relative to the container to permit resilient movement of at least a portion of the strap toward and away from the container. Figures 7-10 and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall). The hand is inserted between the strap and the outer surface of the container to a degree sufficient to move that portion of the strap away from the container. Figures 7-10 and column 2, line 55 through column 3, line 35 (while the bottle wall is referred to as being moving, this would provide relative movement of the strap; and as well the strap would be movable and flexible to some degree as it is made of the same material as the bottle wall). The strap resiliently urges the hand against the outer surface of the container. Column 3, lines 1-10. Fluid is introduced into the container. Column 3, lines 15-25. The second end of the supportive strap can be secured to the bottom end of the container. Figure 7 and column 2, lines 55-65 (note the positioning of point 40b in the bottom wall portion 20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Armstrong to use a resilient flexible strap to hold the hand in contact with the container rather than the molded handle as suggested by Zebrowski with an expectation of providing a desirably supported container, because Armstrong teaches a hand held container to hold fluid with an integral handle, and Zebrowski teaches that when providing a hand held container to hold fluid, it is desirable to use either an integrally molded handle or to use an attached strap to hold the hand with an optional molded recess to place the hand. As the strap urges the hand against the outer surface of the container it would hold the hand in place, and thus stabilize the container with respect to the movement relative to the hand. As shown by the placement of the handle in Armstrong, the replacement of the handle area with a strap would provide the bottom of the strap on the bottom side of the container. As to the adjustability of the strap, Armstrong indicates that the user can have variously sized hands (column 3, lines 1-5) and as a result, it would have been obvious to one of ordinary skill in the art to make the strap adjustable to allow for different sized hands given that it is the Examiner's position that it is well known in the art to make holding devices such as belts adjustable for different sized users.

7. Claims 1-6, 8-14 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US 4927046) in view of Boom (US 5011536).

Claim 1: Armstrong teaches a method for securing a users hand to a container. Figures 1 and 6 and column 2, lines 40-45. The container has an outer surface and an inner surface. Figure 1 (note area 1 and area 7). The inner surface defines a cavity therein. Figure 1. The

cavity has an inner perimeter measured at about a middle portion of the cavity, with the opening generally being at least as large or larger than the inner perimeter at the middle. Figure 1. A supportive handle is provided which is an integral part of the container body. Figure 5 and column 4, lines 15-35. To hold the container, the hand of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Figures 1 and 6 and column 3, lines 1-15.

Claim 2: Armstrong also teaches a method of holding a fluid. Column 2, lines 40-45 and figures 1 and 6. A container is provided having a bottom end and a sidewall extending from the bottom end to define a main body, the container having a rim located at an upper perimeter of an opening defined by the main body of the container. Figure 5 (note area of element 8 and element 1). A supportive handle is provided that is an integral part of the container body. Figure 5 and column 4, lines 15-35. To hold the container, the hand (appendage) of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Figure 1 and 6 and column 3, lines 1-15. Fluid is introduced into the container. Figure 6 and column 2, lines 40-45.

Claims 5, 11, 17: a fluid applicator tool is provided. Figure 6. The fluid applicator tool is inserted into the fluid within the container. Figures 1 and 6. The fluid is applied to a surface with the fluid applicator tool. Figure 6.

Claims 6, 14: a retainer is provided for securing at least a portion of the fluid applicator tool within the container. Column 4, lines 1-20 and figure 1.

Claim 8: the appendage can be a hand of a user. Figure 1.

Claims 9, 16, 20: the fluid can be paint. Column 2, lines 40-45.

Claims 10, 21: the applicator tool can be a brush. Figure 6.

Armstrong teaches all the features of these claims except the use of the strap as claimed and the adjustable features of the strap.

However, Boom teaches a method for securing a users hand to a container. Column 2, lines 10-30. The container has an outer surface and an inner surface. Figures 1 and 3 and column 2, lines 65-68 (container 28). The inner surface defines a cavity therein. Figures 1 and 3 and column 2, lines 65-68 (for holding the wipes). One method of securing the user's hand to the container is to provide a handle affixed to the container with cylindrical members. Figures 1-3 and column 3, lines 15-50. To hold the container, the hand of the user is inserted between the handle and the outer surface of the container, so that the hand grips the handle. Column 2, lines 15-30 and column 3, lines 35-45. A second method of securing user's hand to the container is to provide a strap having at least one end secured to the outer surface of the container. Figures 4-6 and column 3, lines 50-60 (handle 44). The strap is mounted relative to the container to permit resilient (elastic) movement of at least a portion of the strap toward and away from the container. Column 2, lines 15-30. The strap would be elastic. Column 2, lines 25-30 (the resilient movement). The hand is inserted between the strap and the outer surface of the container to a degree sufficient to move that portion of the strap away from the container. Column 2, lines 15-30 and figure 3. The strap resiliently urges the hand against the outer surface of the container. Column 3, lines 15-30 and figure 3. The second end of the supportive



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strap can be secured to the bottom area of the container. Figures 4-6 (note the positioning of point 48).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Armstrong to use a resilient (elastic) flexible strap to hold the hand in contact with the container rather than the molded handle as suggested by Boom with an expectation of providing a desirably supported container, because Armstrong teaches a hand held container to hold fluid with an integral handle, and Boom teaches that when providing a hand held container, it is desirable to use a handle with a thin strap to allow holding the container with the hand and also performing other activities (column 2, lines 30-35). As the strap urges the hand against the outer surface of the container it would hold the hand in place, and thus stabilize the container with respect to the movement relative to the hand. As shown by the placement of the handle in Armstrong, the replacement of the handle area with a strap would provide the bottom of the strap on the bottom side of the container. As to the adjustability of the strap, Armstrong indicates that the user can have variously sized hands (column 3, lines 1-5) and as a result, it would have been obvious to one of ordinary skill in the art to make the strap adjustable to allow for different sized hands given that it is the Examiner's position that it is well known in the art to make holding devices such as belts adjustable for different sized users, and furthermore, Boom provides that the handle can be placed on different containers, with two separate attachments (such as 36, 38) that would be adjustable as to the location of the container where they are applied (see column 3, lines 25-35).

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8. Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Boom as applied to claims 1-6, 8-14 and 16-21 above, and further in view of Vaughn (US 3536285).

Armstrong in view of Boom teach all the features of these claims except the magnet for holding the applicator tool in the container.

However, Vaughn teaches that it is desirable to provide a device for holding a paint brush in a paint container. Column 1, lines 10-50. The device is a magnetic means which is secured to the wall of the paint container which magnetically holds the paint brush. See figure 3 and column 2, lines 15-50.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Armstrong in view of Boom to provide a magnetic means on the wall of the paint container to hold the paint brush as suggested by Vaughn in order to provide a desirably held paint brush, because Armstrong in view of Boom teach providing a paint container with a handle and a paint brush holding means on the handle side of the container, and Vaughn teaches a desirable paint brush holding means is a magnetic means attached to the wall of the paint container. The magnetic means would be placed on the holder side of the container, because that is where Armstrong indicates the desire to hold the paint brush.

9. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong in view of Boom and Vaughn as applied to claims 7 and 15 above, and further in view of Cox (US D444,929 S).

Armstrong in view of Boom and Vaughn teach all the features of these claims except the inward facing rim of the container.

However, Cox teaches that a container for holding paint to be applied with a paint brush desirably has an inward facing rim extending around the upper perimeter of the sidewall of the container in order to perform brush wiping. See the claim and figure 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Armstrong in view of Boom and Vaughn to provide an inward facing rim on the paint container as suggested by Cox in order to provide a desirable brush wiping area, because Armstrong in view of Boom and Vaughn teach providing a paint container to hold paint to be brushed on with a paint brush, and Cox teaches a desirable paint container for holding paint to be applied with a brush has an inward facing rim designed to provide a desirable brush wiping area.

#### Response to Arguments

10. Applicant's arguments with respect to claims 1-16 and 22-24 have been considered but are moot in view of the new ground(s) of rejection.

The new art to Boom and Cox has been cited as to the newly claimed features.

11. Applicant's arguments filed Dec. 8, 2004 have been fully considered but they are not persuasive.

As to claims 17-21 applicant argues that Zebrowski does not provide the stabilizing strap as claimed. Furthermore, applicant argues, the references do not teach or suggest the adjustable strap.

The Examiner has reviewed these arguments, however, the rejection is maintained. As to the stabilizing strap, claim 17 requires that the strap urges the hand against the outer surface of the container and stabilizes the container with respect to movement relative the hand. Zebrowski teaches these features. At column 3, lines 1-10 indicate that when the hand is in the support, "The frictional engagement of palm to bottle wall and of strap to the back of the hand provides a stable grip of the bottle without the need to squeeze the side wall." This clearly indicates that the strap urges the hand to the bottle and provides the claimed stabilization because they are in frictional engagement and do not move with respect to each other. As to the adjustable strap, while the grip of Armstrong may not provide for adjustment, the strap of Zebrowski does allow for adjustment to different sized hands, since the strap is a strip affixed to the bottle, and the straps could clearly be affixed at different spots on the bottle for different sized hands or used with adhesive that allows for movable placement to correspond with the well known desire to make holding devices adjustable.

### *Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

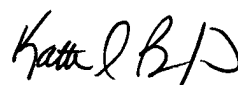
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine A. Bareford whose telephone number is (571) 272-1413. The examiner can normally be reached on M-F(6:30-4:00) with the First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on (571) 272-1415. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Other inquiries can be directed to the Tech Center 1700 telephone number at (571) 272-1700.

Furthermore, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
KATHERINE BAREFORD  
PRIMARY EXAMINER